In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 354

CALVERT ALLEN LACY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. III 1–7) is reported at 410 F. 2d 103.

JURISDICTION

The judgment of the court of appeals was entered on April 22, 1969. A petition for rehearing was denied on June 10, 1969. On July 3, 1969, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to July 20, 1969. The petition was filed on July 18, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the jury verdict.

2. Whether the trial court abused its discretion in denying petitioner's motion for a severance.

STATEMENT

On July 14, 1967, a one-count indictment was returned against petitioner and co-defendant Oden [1] in the United States District Court for the Northern District of Texas. The indictment charged that on or about February 29, 1964, petitioner and Oden had transported a woman (Flakey Jo Goodin Cooper) in interstate commerce from Lubbock, Texas, to Hobbs, New Mexico, for the purpose of having her engage in prostitution, in violation of 18 U.S.C. 2421. Petitioner and Oden were convicted as charged after a jury trial (R. 3, 553).[2] Petitioner was sentenced to five years' imprisonment, to be eligible for parole at such time as the Board of Parole might decide (R. 55). The court of appeals affirmed (Pet. App. III 1–7; 410 F. 2d 103).

1. The evidence is summarized in our brief in opposition to Oden's petition, No. 287 Misc. For present purposes it is sufficient to focus on the evidence insofar as it amplifies the government's case against petitioner Lacy.

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[1] Oden has also filed a petition for a writ of certiorari which is presently pending, No. 287 Misc., this Term.

[2] "R" designates the three-volume record on file with the Clerk in No. 287 Misc. Volume II of this record is the trial transcript.

In February 1964 Oden was with Mrs. Cooper at the Wayfarer Inn in Lubbock, Texas, where she was working for Oden as a prostitute (R. 163–165). On one occasion during this period, petitioner Lacy came to Lubbock and then returned to Hobbs, New Mexico (R. 409). Shortly thereafter, Oden told Mrs. Cooper that he had telephoned Lacy in Hobbs "to come and get us" because they could make more money out there, and that Lacy was coming to Lubbock that evening or the following morning (R. 166).[3] Shortly thereafter, Lacy asked one Jenkins to drive him to Lubbock and Jenkins agreed (R. 275–276). Jenkins testified that he did not recall Lacy's telling him anything about the purpose of the trip (R. 277).

After spending a short period of time in Lubbock, Lacy, Oden, Mrs. Cooper, two other men and Jenkins drove to Hobbs, New Mexico. Apparently, Lacy drove a short portion of the trip, with Jenkins doing most of the driving (R. 283–285, see R. 168–169). When they arrived at Hobbs, they stopped at a hotel. Lacy and Oden took some clothing out of the back of the automobile and entered the hotel. They remained there a short time (R. 169, 286). The two men then returned to the automobile and the entire party went to another hotel where Mrs. Cooper registered with Oden. Mrs. Cooper worked at this hotel as a prostitute for about two weeks, giving her earnings to Oden (R. 171–172).

According to Mrs. Cooper, she had no further dealings with Lacy; she stated that she saw him on one or

[3] The government introduced testimony showing that a telephone call had been made from the Wayfarer Motel to Lacy in Hobbs, New Mexico, from one of the rooms occupied by Oden and his party (R. 255, 243, 405).

two further occasions in Hobbs, New Mexico, but never thereafter in Texas (R. 205, 209).[4]

The government also introduced two conversations between an F.B.I. agent and petitioner Lacy. The first occurred on July 12, 1965, after Lacy had been warned of his right to silence and counsel (R. 343, 365). At that time, Lacy told the agent that in the spring of 1964, he was living in Hobbs, New Mexico, and had received a telephone call from Oden, in Lubbock, Texas, telling him that he had no transportation and wanted to go to Hobbs; that since Oden was his friend he felt obligated to help; and that since he had no car himself he asked Jenkins to drive him down to Lubbock in Jenkins' automobile. He stated that he was aware that Oden was having Mrs. Cooper work as a prostitute in Lubbock at the time, but could not remember if Mrs. Cooper accompanied them on the return trip to Hobbs (R. 367–368). Following Lacy's arrest in April 1967, he told the agent that Mrs. Cooper was in the automobile when they traveled from Lubbock, Texas, to Hobbs, New Mexico; that the charge against him was a "bum rap", since if he had to be prosecuted "he felt that everyone else ought to be prosecuted"; and that while "he had worked" prostitutes in Texas, he had never been involved in any transportation of a woman over State lines for im-

[4] There was no evidence connecting Lacy with the events in May 1964, involving the alleged beating of Mrs. Cooper by Oden, or Oden's threat to shoot a hotel employee in Texas for having taken Mrs. Cooper away (see our brief in opposition in No. 287 Misc., this Term, p. 3).

moral purposes (R. 374–375).[5] An address book found on his person at the time of the arrest contained various names, addresses and hotels in various States (R. 378–380). There was also testimony from a room clerk in a Lubbock motel that he had discussed prostitution activities with Lacy over the telephone (R. 393–395).

2. In its final charge, the court instructed the jury, *inter alia,* as follows (R. 485–486):

> It is your duty to give separate, personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants. Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct, and any other evidence in the case which may be applicable to him.

In supplemental instructions, the court stated that all the evidence concerning activities subsequent to the trip to Hobbs (*i.e.,* the beatings of Mrs. Cooper and the other events of May 1964) had been admitted to show "the purpose and intention of the defendant [*i.e.,* Oden] who was present at the time of any statement or act in evidence * * * and you only consider the statements or acts against a defendant who was present during the statement or the acts" (R. 551–

[5] These statements were volunteered after petitioner had been fully warned as to his rights by the arresting agent, had been arraigned and had consulted with counsel (see R. 344–348; 369–372).

552).[6] There was no objection to the court's charge (R. 488; see R. 497).

ARGUMENT

1. The evidence was sufficient to support the jury verdict against petitioner. It showed that he had assisted Oden in the interstate transportation of Mrs. Cooper with full knowledge, just prior to the transportation, that she had been engaging in prostitution. The jury could infer that, unlike the other men who went along on the trip from Lubbock to Hobbs, petitioner's actions were not casual. He had been specifically called by Oden to assist in the interstate transportation; he had provided an automobile for the trip; and, once the group had arrived in Hobbs, he had initially participated with Oden in attempting to obtain a hotel room for Mrs. Cooper. Considering further Lacy's own involvement in prostitution activities and the statements he had given to the F.B.I. in July 1965 and April 1967, the jury verdict, that he knowingly participated in the interstate transportation of Mrs. Cooper for immoral purposes, was based on sufficient evidence. See *Glasser* v. *United States*, 315 U.S. 60, 80.

2. The joinder was not prejudicial. While much evidence was admitted relating to the events in May 1964 concerning Oden's actions towards Mrs. Cooper, the government's proof made clear that these events had nothing to do with petitioner Lacy. Indeed, Mrs.

[6] During trial when Mrs. Cooper was about to describe her beating by Oden in May 1964, the Court admonished the jury that it should "not consider it for any purpose with respect to Mr. Lacy * * *" (R. 187–188).

Cooper testified that she had not seen Lacy again after their arrival at Hobbs, New Mexico (See R. 205, 209). Moreover, the trial court specifically admonished the jury in its instructions that it should not consider any of these events on the question of Lacy's guilt or innocence. As the court of appeals found, in these circumstances there was no abuse of discretion in the trial court's refusal to grant a severance (Pet. App. III 2).[7]

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1969.

[7] Petitioner's further contention that he was denied a speedy trial is fully answered in our brief in opposition in the companion *Oden* case (No. 287 Misc., this Term). We are providing petitioner's counsel with a copy of that brief. The contention that the trial should have taken place in Hobbs, New Mexico, is insubstantial. The interstate transportation began in Lubbock, Texas, and the trial could therefore properly take place in the Northern District of Texas in which district Lubbock was located.

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